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AUSTIN TX 78758

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OFFICE OF PETITIONS

In re Application of :
Saleh et al. :
Application No. 09/750,668 : LETTER REGARDING
Filed: December 29, 2000 : PATENT TERM ADJUSTMENT
Atty Docket No. CIS0008P4US :

This letter is in response to the "COMMENT ON PTA CALCULATION," filed on May 1, 2008. Applicants request that the initial determination of patent term adjustment under 35 USC 154(b) be reviewed. The request is treated as a request pursuant to applicant's duty of good faith and candor to the Office.

The request for review of patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment at the time of the mailing of the Notice of Allowance is NINE HUNDRED FIFTY EIGHT (958) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On February 1, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 USC 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is nine hundred sixty-nine (969) days. Applicants state that the PALM entry date for the RCE filed on June 18, 2007, is incorrectly stated as June 11, 2007, and may affect the PTA calculation for the subject application.

The Office initially determined a patent term adjustment of nine hundred sixty-nine (969) days based on an adjustment for PTO delay of one thousand one hundred thirteen (1113) days, pursuant to 35 USC 154(b) and 37 CFR 1.703(a)(1). This was reduced by the following periods of applicant delay pursuant to 37 CFR 1.704(b): by three (3) days, for the filing of an amendment in response to a non-final Office action on December 30, 2005, three (3) months and three (3) days after the mailing of the non-final Office action on September 27, 2005; by four (4) days, for the filing of an amendment in response to a non-final Office action on October 10, 2006, three (3) months and four (4) days after the mailing of the non-final Office action on July 6, 2006; by 85 days, for the filing of a request for continued examination (RCE) on June 11, 2007, three (3) months and 85 days after the mailing of a final Office action on December 18, 2006; by 34 days, for the filing of a response to the non-final Office action on November 1, 2007, three (3) months and 34 days after the mailing of the non-final Office action on June 28, 2007, and by 18 days, for the filing of a supplemental amendment on November 19, 2007, or 18 days after the filing of an amendment on November 1, 2007.

Applicants are correct. The RCE was filed on June 18, 2007, not June 11, 2007. 37 CFR 1.704(b) states, in pertinent part that:

An applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed.

Accordingly, ninety-two (92) days of applicant delay should have been assessed, rather than 85 days, for filing of an RCE on June

18, 2007, or three months and 92 days after the mailing of the final Office action mailed December 18, 2006.

Further, a review of the record reveals that applicants should have been assessed four (4) days of reduction in patent term adjustment for the filing of an RCE on June 19, 2006, or three months and 4 days after the mailing of the final Office action mailed on March 15, 2006.

In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is nine hundred fifty-eight (958) days (1113 days of PTO delay, reduced by 155 (3+4+4+92+34+18) days of Applicant delay).

As this letter was submitted as an advisement to the Office of an error in applicants' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

The Office of Data Management has been advised of this decision. The application is thereby forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and if applicable, for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to Douglas I. Wood, Senior Petitions Attorney, at (571) 272-3231.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Revised PALM Calculation

Day : Wednesday

PALM INTRANET

Date: 1/28/2009

Time: 18:48:04

PTA Calculations for Application: 09/750668

Application Filing Date:	12/29/2000	PTO Delay (PTO):	1113
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	144
Post-Issue Petitions:	0	Total PTA (days):	958
PTO Delay Adjustment:	-11		

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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